

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

NICOLE M. ROBINSON,

-VS-

Case No. 1: 06-cv-1336

EQUIFAX INFORMATION
SERVICES, LLC,
Defendant.

HEARING ON MOTIONS

April 20, 2007

Before: T. Rawles Jones, Jr., Magistrate Judge

APPEARANCES :

Thomas B. Christiano, Counsel for the Plaintiff

Lewis P. Perling, Counsel for the Defendant

1 NOTE: The case is called to be heard at 10:26 a.m.
2 as follows:

3 THE CLERK: Nicole Robinson versus Equifax
4 Information Services, case number 06-cv-1336.

5 THE COURT: Good morning.

6 MR. CHRISTIANO: Your Honor, Thomas Christiano for
7 the plaintiff, Nicole Robinson.

8 THE COURT: Good morning.

9 MR. PERLING: And, Your Honor, Lewis Perling on
10 behalf of Equifax. If I might address the Court before we get
11 started on my appearance without, unfortunately, our local
12 counsel being available.

13 THE COURT: Sure.

14 MR. PERLING: Judge, of course, I am aware of the
15 requirement that Virginia Bar counsel be present. I am Lewis
16 Perling, I am from Atlanta, Georgia, we are national counsel
17 for Equifax. I have been admitted pro hac.

18 Mr. Montgomery had a conflict today. We received
19 this motion, of course, last Friday. We have been working
20 since Monday to resolve it.

21 I was led to believe that we could resolve it
22 without a hearing. We consented to most everything they have
23 asked for. We have provided additional information.

24 Mr. Montgomery had an unavoidable conflict this
25 morning.

1 THE COURT: That's fine. It happens. And I
2 actually remember what it's like out there in the real world,
3 Mr. Perling.

4 MR/ PERLING: Thank you, Judge.

5 THE COURT: So, you may appear without local
6 counsel.

7 MR/ PERLING: Thank you, Your Honor.

8 THE COURT: Mr. Christiano, I hope you agree with
9 Mr. Perling that a lot of the dispute has been resolved.
10 From your side of the room, what remains to be
11 resolved.

12 MR. CHRISTIANO: Your Honor, we would disagree that
13 most of the dispute has been resolved.

14 As was made clear in the motion, there was a lot of
15 effort made to obtain these documents and proper responses to
16 interrogatories.

17 What has happened is there has been a burden
18 shifting to plaintiff to constantly petition, request to get
19 the documents.

20 And this morning the supplementation that was
21 supposedly going to be made was given to me just now. There
22 is no Bates stamp numbers on the supplemented documents.

23 And there were prior representations made two to
24 three weeks ago that the reason for the delay was that the
25 documents had to be sent out to be copied.

1 And I don't even know if this is a complete set.
2 They have been thrust upon me at this point. Which has been
3 the pattern and practice of discovery of Equifax in this case
4 and in previous cases we have had before them with this Court.

5 THE COURT: Well, we are not going to spend time
6 this morning on previous cases.

7 MR. CHRISTIANO: I will move on, Your Honor.

8 Where we are right now, we have less than a month
9 toward the discovery. We have just received what's purported
10 to be the rest of the documents. I have serious reservations
11 whether those are the rest of the documents. I can tell there
12 is, that Bates stamp number is just done on a 30-second look
13 at them. Their interrogatories are wholly incomplete.

14 The most emblematic problem of what's going on in
15 this case occurred when we received unsigned and unverified
16 supplemental responses to interrogatories this week.

17 We requested information on people that have worked
18 on plaintiff's credit file, and we were told that only two
19 people worked on the credit file.

20 So, we said, okay, we went back and looked at the
21 documents with the code that we were given for those two
22 people. Upon reviewing the documents that we did have, we
23 discovered that six to seven other operators and a person by
24 the name of Gary appeared to have worked on plaintiff's credit
25 file.

1 At that point we knew that we could not reply on the
2 supplementations of this defendant and that the responses
3 still remain inadequate.

4 The other point is, as we addressed in our
5 memorandum in the motion to Interrogatory Numbers 16 and
6 Number 23, we were asking questions about tell us why other
7 people's information is showing up on our client's credit
8 report.

9 Answer: Well, we don't know that it's happened. We
10 don't know that we have provided other information on your
11 client's credit report.

12 So, that's fine, as part of this memo we attached
13 Exhibit C that demonstrated that other credit files were
14 coming on our client's credit report. We still have no
15 supplementation on those responses.

16 It is emblematic of the problem that we have had in
17 this case and why the relief we requested is proper. Before
18 we even filed the discovery plan, we talked with counsel, we
19 requested these documents. They knew exactly what we were
20 looking for. We made it crystal clear, that is February 21,
21 Your Honor.

22 Here it is April 20 and we get the final so-called
23 supplementation of documents that were allegedly sent out to
24 be copied when it is not, that doesn't look like all that many
25 documents to be produced that can't be produced much sooner

1 than now.

2 So, this is a corporate defendant who is on the New
3 York Stock Exchange.

4 Moreover, there is a whole group of documents that
5 we allege are critical to this case. Our client has suffered
6 mightily from the theft of her identity. She testified before
7 Congress.

8 When she testified before the Congress, there was an
9 Equifax officer representative there. He heard her story and
10 told her he would do something about it. And our allegation
11 is that he sent an e-mail down to Equifax in order to get the
12 problem solved.

13 Not only in the interrogatory responses are the
14 details of what he has done not in there, he doesn't identify
15 any communications that have occurred. And now they say they
16 can't produce the e-mail because they no longer have them.
17 Which, again, strains credibility for a corporation the size
18 of Equifax and reports on the New York Stock Exchange, that
19 they are not going to retain an e-mail within the last year?
20 And we are supposed to rely on that.

21 It is the same problem we have had throughout
22 discovery. It is like an onion, we peel one layer off, we
23 discover another.

24 So, that's why we requested that Equifax be ordered
25 to produce their corporate representatives up here. And

1 that's why we requested relief from the discovery pretrial
2 conference deadline of May, in May because we are still
3 putting together the case through no fault of our own and
4 based upon Equifax's delays.

5 THE COURT: All right. Thank you, Mr. Christiano.
6 Mr. Perling, what's going on here?

7 MR. PERLING: Judge, we have worked mightily to meet
8 the demands of the plaintiff. We have worked timely and
9 consistently with them, cordially with them as much as
10 possible.

11 The frozen scans are a unique issue, Judge.
12 Typically Equifax would make a motion for a protective order
13 because the documents that Equifax has to produce as a frozen
14 scan are extremely time consuming, extremely costly and very
15 difficult.

16 And if I might just take a moment to explain what a
17 frozen scan is and how that process works. I hope to point
18 that out to the Court.

19 Typically we would seek a protective order--

20 THE COURT: It would have been helpful, by the way,
21 if you had filed an opposition to the motion that included
22 that among other things.

23 MR. PERLING: I understand, Your Honor. And my
24 apologies for that is, is that we indeed thought that we had
25 resolved the issues.

1 THE COURT: Well, that's hard to accept, Mr.
2 Perling, in light of the representations that Mr. Christiano
3 has made to the Court and--

4 MR. PERLING: I understand. I hope--

5 THE COURT: And for better or worse, the Court's
6 prior experience with him comes into play.

7 MR. PERLING: I understand.

8 THE COURT: Tell me what's going on.

9 MR. PERLING: Well, the frozen scans are a
10 document-- At the end of each month Equifax takes a snapshot
11 of its entire database.

12 As the Court is probably aware, Equifax being one of
13 the three national credit reporting agencies, it has a
14 humungous database with the credit information of every
15 consumer in the United States.

16 In order to, as a loss prevention method, Equifax
17 takes a snapshot of the entire database at the end of each
18 month and does what I like to call kind of a zip file of it.
19 As the Court might be aware --

20 THE COURT: I am.

21 MR. PERLING: -- as I do of how computers work, they
22 simply condense the information. It is then stored.

23 In order to then cull information from that, someone
24 literally has to read through lines and lines and lines of
25 code to find someone's name.

1 So, what happened here was Ms. Robinson was a victim
2 of fraud, a very crafty fraudster who used her name in
3 numerous different addresses and variations on the plaintiff's
4 Social Security number.

5 So that in Equifax's database there were created
6 numerous fraudulent credit files that looked like the
7 plaintiff, but weren't her.

8 And what the plaintiffs have asked for is that
9 Equifax go back into the frozen database and cull every
10 instance that they could find where these multiple frozen
11 scans were of this other person. Very time consuming. I
12 informed the plaintiffs of this at the beginning.

13 We produced them in a timely fashion based upon a
14 one or two-day grant of an extension of time from them to
15 provide additional information. Bates labeled. All of the
16 documents that Equifax typically has with regard to a
17 consumer. That is, the contacts it has with regard to a
18 dispute. A document called an audit trail which shows when an
19 inquiry was made. The manuals that Equifax maintains for its
20 procedures. And the frozen scans on the consumer herself. It
21 is about 1,000 pages, all labeled and all divided up so that
22 they were easily obtainable and easily readable.

23 I informed counsel that the other frozen scans were
24 very time consuming. I was informed that ultimately there
25 were four boxes of documents that the person at Equifax had to

1 go through in order to cull what has been produced here. And
2 that's because she had to look at every Nicole Robinson in
3 Maryland and every Nicole Robinson in Texas to determine which
4 of these Nicole Robinsons out of these four boxes related
5 potentially and, of course, she was overbroad in producing
6 these documents, potentially to this.

7 As part of what I will call a perfect storm here
8 with regard to production of these documents, two weeks ago I
9 was promised these documents from Equifax. I did not realize
10 it, but the person who was producing them's grandmother passed
11 away. She was out at the end of that week.

12 The next week I was on vacation, that was last week.
13 I came back Friday, hoping to find them on my desk and send
14 them immediately over to opposing counsel. And instead I got
15 the motion to compel. Immediately contacted Equifax and said,
16 you know, what's happening. I was informed this person was
17 out. This week the four boxes came through, they were culled
18 and here are the documents here.

19 They have not been Bates labeled. I will provide
20 you with a supplemental copy that is Bates labeled. Okay.
21 But I wanted to bring them here today and make sure that you
22 have them.

23 So, that is-- I am trying to look at the motion and
24 see exactly what they are complaining they didn't get in the
25 motion.

1 One of the things they claim they didn't get were
2 four ACIS cases. An ACIS case is Equifax's record of a
3 reexamination.

4 In speaking to Mr. Blankingship this week, we
5 determined that of these four, there was one that I personally
6 missed because I had a list of the ACIS cases, provided each
7 one. We provided it here today.

8 So, they have, this is on page 2 of their brief, the
9 documents they were looking for. One of these, the last one,
10 has been produced. The other three, there were no ACIS cases,
11 and Mr. Blankingship understands that.

12 The next documents they claim that they didn't have
13 were the e-mails. And plaintiff's counsel has mentioned an
14 e-mail that the person who attended the Congressional hearing
15 sent.

16 I asked him if he had that this week. He does not
17 have it. There is a three-month retention policy at Equifax.
18 They are very strict about their e-mails and very strict about
19 their data. That has been deleted.

20 I asked everyone else involved who was involved with
21 Ms. Robinson and handling her file if they had any e-mails. I
22 did get one and that has been produced today. And I am told
23 that that is the only e-mail that's in possession of Equifax
24 at this time.

25 The last thing they mention on page 3 with regard to

1 the documents is that they claim that Equifax sent them on a
2 fishing expedition to look through these documents. These are
3 versed attorneys in handling Fair Credit Reporting Act cases.
4 They have read Equifax's documents numerous times. They were
5 able to cull through them very easily because they provided a
6 lot of information to me showing that they have been able to
7 cull through them.

8 We did not produce them in a haphazard way. They
9 were marked. The ACIS cases were completely separate from the
10 other documents. The audit trails were clearly separate from
11 the other documents. The manuals were clearly separate from
12 the other documents. And the frozen scans were clearly
13 separate from the other documents.

14 Experienced attorneys as these, this is not a
15 confusing way to produce these documents.

16 Judge, let me just, let me get to the bottom line.
17 I looked at the relief, in going to the last page or the sixth
18 page of what they have asked for, the relief that they have
19 requested. They have asked for full, complete and proper
20 responses to interrogatories and document requests from
21 Equifax.

22 It is our contention that we have provided those.
23 They submitted to Your Honor a copy. I think if you look at
24 the responses, Equifax has indeed responded to each one.

25 They seem to kind of say, well, we want to know

1 information before we take your client's depositions. We want
2 to know what these people are going to say before we take
3 their depositions.

4 With all due respect, they have asked for the
5 depositions, they have said they are going to take them. They
6 haven't noticed them. They said they are going to take them.
7 These people are located in Atlanta. They are not the party,
8 they are not necessarily the corporate witness. They are the
9 parties.

10 So, to drag somebody up here from Atlanta who is not
11 a party, who is somebody that just works at Equifax, we would
12 submit is unfair.

13 But to the extent--

14 THE COURT: I am probably not going to require you
15 to produce Equifax employees who are resident in Georgia up
16 here. I am about one step away from requiring Equifax to pay
17 their expenses going down to Atlanta to take the depositions.

18 MR. PERLING: Well, as an alternative to that, Your
19 Honor, obviously, we would suggest that we would bring the
20 witnesses up here if it was the same expense, but we would
21 leave that to Your Honor.

22 But going back to the relief they have requested--

23 THE COURT: I would like to be able to leave it to
24 you-all, Mr. Perling.

25 MR. PERLING: Okay. Thank you, Your Honor.

1 THE COURT: I haven't decided whether I can do that
2 yet.

3 MR. PERLING: Right. With regard to, you know, the
4 relief they requested, this is why we said we thought we had
5 worked this out. We agreed with them that we provided full
6 responses. That if there was additional information they
7 wanted, we would supplement it.

8 They have asked me who knows what. And I said to
9 Mr. Blankingship on the phone numerous times this week, I will
10 supplement by providing again, though we contend we have
11 already done it, a statement that this is Ms. Fluellen, she
12 was involved in this, here is what she says. And I will
13 provide that to them.

14 And that's the full responses that they have
15 requested. We have agreed to that.

16 An extension of time for plaintiff to file their
17 expert reports. Of course, that's up to the Court, but we
18 have agreed to that. We don't oppose that.

19 The extension of discovery through, through the
20 deadline of the pretrial at the end of next month, that's what
21 they have asked for, we didn't oppose that.

22 The only consideration we would ask for is not
23 ordering Equifax to produce its witnesses here in Virginia.
24 And, of course, we leave that up to Your Honor.

25 THE COURT: Thank you.

1 MR. PERLING: Thank you.

2 THE COURT: Do you need to be heard further, Mr.
3 Christiano?

4 MR. CHRISTIANO: I would just like to point out two
5 brief things, Your Honor. And I am going to go with why the
6 interrogatories are not full and complete.

7 We didn't hear much about why the interrogatories
8 aren't full and complete from Mr. Perling this morning. And
9 the reason, I submit, is he knows they are not.

10 The responses for the most part incorporated Rule
11 33(d), and they were improper to do that.

12 One of the questions we asked is: Tell me all your
13 changes to your policy from a certain date. In the previous
14 case, and I know Your Honor doesn't want to hear about the
15 previous case, but in this, to this extent it is relevant on
16 the merits. They defended their case on the previous, in the
17 previous matter.

18 We made certain changes, we are constantly making
19 changes to our policy to make sure we have reasonable
20 procedures to protect people. Therefore, whatever procedures
21 and policy that they are changing, is relevant to their
22 defense of this case.

23 And their response to that interrogatory was: See
24 an entire policy manual.

25 Okay. We have been through the policy manual

1 before. I have a pretty good understanding of what's where,
2 but I don't know necessarily what has been changed since when.
3 And that is not a proper response to that specific
4 interrogatory.

5 And if I go back to my previous argument on
6 Interrogatory Number 16, Interrogatory Number 23, the flavor
7 of its responses to the interrogatories are, here is the
8 documents, you guys know what you are doing, you go look
9 through, you take all your time to look at them, we are not
10 going to be bothered to give proper responses to
11 interrogatories.

12 It was improper. The supplementation was improper.
13 After we did go back and review, we found more people that
14 were not even disclosed. We were told only two people worked
15 on the case. Discovery closes in less than a month. We were
16 didn't diligent in getting out our discovery. We diligently
17 requested these documents in February. And they have known
18 since February 21 what we wanted and what we were looking for
19 to get this, keep this case on track.

20 And we knew that we could potentially have a problem
21 and we acted with no undue haste.

22 THE COURT: Thank you. Mr. Perling --

23 MR. PERLING: Yes, sir.

24 THE COURT: -- you get the--

25 MR. PERLING: Thank you, Your Honor.

1 THE COURT: You can have a seat.

2 MR. PERLING: Okay.

3 THE COURT: You get the benefit of the doubt today
4 personally.

5 MR. PERLING: Thank you, Your Honor.

6 THE COURT: Because I accept your representations
7 about where you were and what you were doing. And I take into
8 account on a real world basis that you have local counsel who,
9 as far as I know, does not practice regularly in this division
10 of the Court. And the Alexandria Division and the Richmond
11 Division of the Eastern District of Virginia do things very
12 differently.

13 That being said, what Equifax has done and not done
14 in this case is simply not acceptable. It is completely at
15 odds with the established customs and practices of this
16 division. It is completely at odds with the standards to
17 which the Court as a whole, not just this division, hold
18 counsel and their clients to get discovery done in an
19 appropriate and timely manner so that the case can be
20 litigated on its merits.

21 And in that regard, I want you to tell the folks in
22 Atlanta that if they had any doubt about it, this case is
23 going to be litigated on the facts.

24 I find that Equifax's responses to the
25 interrogatories and document requests are inadequate,

1 essentially for the reasons set out by plaintiff in her
2 papers. And I don't think under the circumstances presented
3 here I need to go through them item by item. I will if you
4 want me to, but I don't think that's necessary.

5 MR. PERLING: Not necessary.

6 THE COURT: I am going to require that Equifax serve
7 complete and adequate interrogatory answers by hand or by fax
8 or by e-mail as you-all may agree to be in Mr. Christiano's
9 hands not later than noon one week from today, April 27.

10 And by that I intend that Equifax reanswer every one
11 of the interrogatories. And 33(d) answers will not be
12 acceptable because I find that they have been misused in the
13 previous responses.

14 I want a complete new set of interrogatory answers.
15 If the answer is, we stand on our previous answer, you are
16 entitled to do that. But I want Equifax to go all the way
17 through, interrogatory by interrogatory, and give Mr.
18 Christiano, in colloquial terms, a stationary target.

19 And with respect to the document requests, Equifax
20 is to serve a supplemental Rule 34 document response, again by
21 hand or otherwise as you-all may agree, not later than noon
22 next Friday which squarely meets the substance of every
23 document request and says what has been produced, what will be
24 produced and, if applicable, what's being withheld on any
25 claim of privilege or protection.

1 And to the extent documents have not theretofore
2 been produced, the documents themselves properly organized and
3 Bates numbered are to be in Mr. Christiano's hands not later
4 than noon on the following Monday, April 30.

5 This is a Rule 37(a) motion. It is clear to the
6 Court that the reason we are only at the Rule 37(a) stage at
7 this point is that the good faith efforts of plaintiff's
8 counsel to get the matter resolved without Court involvement
9 have been frustrated, whether intentionally or not, I
10 understand people's family situations. And a death in the
11 family has to be taken into account.

12 I don't know what happened, I don't care what
13 happened beyond what I have said, but it is clear and I find
14 that plaintiff's counsel's good faith efforts to resolve the
15 matter without Court involvement have been frustrated by
16 Equifax's conduct, acts and omissions.

17 Equifax needs to understand as well that if this
18 matter gets to the Rule 37(b) stage, which I hope it will not,
19 the relief is likely to be draconian.

20 Any questions?

21 MR. PERLING: No questions from Equifax, Judge.

22 THE COURT: All right. Go get it done, gentlemen.

23 MR. PERLING: Thank you, Judge.

24 MR. CHRISTIANO: Does that mean the relief with
25 regards to additional time is denied or--

1 THE COURT: Let me, let me cover that too, Mr.
2 Christiano. I intended to and didn't follow my own notes.

3 Plaintiff's discovery is extended through Friday
4 June 2 for the purpose of completing deposition discovery and
5 anything else that may be necessary as a result of what gets
6 produced next weekend.

7 I am not going to move the final pretrial conference
8 because I don't need to. If you-all tell Judge Lee where
9 things stand, he will set the trial date accordingly.

10 You are asking for an additional two weeks after you
11 got everything, Mr. Christiano, in your expert report, so if
12 you have anything by April 30, then service of your expert
13 report by May 14 ought to give you the relief you were
14 requesting. I find that's appropriate.

15 Mr. Perling, I didn't hear anything about a defense
16 expert report. Is there going to be one in this case?

17 MR. PERLING: Likely not, Your Honor.

18 THE COURT: I didn't--

19 MR. PERLING: We will just want to depose him.

20 THE COURT: All right. I am not going to deal in
21 detail today with the question where anybody needs to be
22 produced for deposition. If the findings that I have made
23 this morning don't generate agreement on how that's going to
24 be handled, you-all can get in touch with me by telephone.

25 MR. CHRISTIANO: Okay.

1 THE COURT: All right. Any other questions? All
2 right.

3 MR. CHRISTIANO: No, Your Honor.

4 THE COURT: Thank you, gentlemen.

5 NOTE: The hearing is concluded at 10:53 a.m.

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8
9 C E R T I F I C A T E o f T R A N S C R I P T I O N

10
11 I hereby certify that the foregoing is a true and
12 accurate transcript that was typed by me from the recording
13 provided by the court. Any errors or omissions are due to the
14 inability of the undersigned to hear or understand said
15 recording.

16
17 Further, that I am neither counsel for, related to,
18 nor employed by any of the parties to the above-styled action,
19 and that I am not financially or otherwise interested in the
20 outcome of the above-styled action.

21
22
23 _____
24 Norman B. Linnell

25 Court Reporter - USDC/EDVA